

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. No. ____ of 2013

IN

WRIT PETITION (CIVIL) NO.494 OF 2012

IN THE MATTER OF:

JUSTICE K. S. PUTTASWAMY (RETD) & ANR

...PETITIONERS

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

AND IN THE MATTER OF:

1. INDIAN OIL CORPORATION LIMITED
....APPLICANT/INTERVENOR NO.1
2. BHARAT PETROLEUM CORPORATION LIMITED
....APPLICANT/ INTERVENOR NO.2
3. HINDUSTAN PETROLEUM CORPORATION LIMITED
....APPLICANT/ INTERVENOR NO.3
..... APPLICANTS/ INTERVENORS

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NEW DELHI
Date : 07.10.2013

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1. INDIAN OIL CORPORATION LIMITED

INDIAN OIL BHAVAN G-9, ALI YAVAR JUNG MARG

BANDRA EAST, MUMBAI - 400 051.

....APPLICANT/INTERVENOR NO.1

2. BHARAT PETROLEUM CORPORATION LIMITED

CURRIMBHARY ROAD, BALLARD ESTATE,

MUMBAI - 400 001.

....APPLICANT/ INTERVENOR NO.2

3. HINDUSTAN PETROLEUM CORPORATION LIMITED

17, JAM SHEDJI TATA ROAD, MUMBAI - 400020.

....APPLICANT/ INTERVENOR NO.3

..... APPLICANTS/ INTERVENORS

APPLICATION ON BEHALF OF THE APPLICANTS SEEKING
INTERVENTION IN THE PRESENT WRIT PETITION UNDER
ORDER XLVII, RULE 2 (3) OF THE SUPREME COURT RULES,
1966.

To,

THE CHIEF JUSTICE OF INDIA HIS
COMPANION JUSTICES
OF THE SUPREME COURT OF INDIA

The Interveners/Applicants

above named

MOST RESPECTFULLY SHEWETH:

1. The Interveners/applicants are the Oil Marketing Companies (for short 'OMCs'), who are Government of India Undertakings and are engaged in refining, distribution and marketing of petroleum products in India. The Interveners/applicants are making this seeking indulgence of this Hon'ble Court for permitting them to intervene in the above matter because they have been prejudiced by the order dated 23rd September 2013 passed in the instant Writ Petition by this Hon'ble Court.
2. That the above Writ Petition (Civil) No. 494 of 2012 (Justice K.S. Puttaswamy (RETD) & Another -Vs- Union of India & Others) (for short '**the instant Writ Petition**') has been filed before this Hon'ble Court, seeking a mandamus restraining the Union of India,

Planning Commission and the Unique Identification Authority of India (for short 'UIDAI') from issuing Aadhaar Cards as per the Executive Order dated 28th January 2009.

3. On 23rd September 2013, an order was passed by this Hon'ble Court in the instant Writ Petition, which reads:

"Issue notice in W. P. (C) No. 829/2013.

Application for deletion of the name of petitioner no. 1 in T. P. (C) Nos. 47 of 2013 is allowed.

T. P. (C) nos. 47 - 48 of 2013 and T. P. (C) No. 476 of 2013 are allowed in terms of the signed order.

All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over.

In the meanwhile, no person should suffer for not getting the Aadhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Aadhaar Card voluntarily, it may be checked whether that person is entitled for it under the law

and it should not be given to any illegal immigrant".

4. That the under recoveries of the OMCs on account of subsidy to the domestic LPG for the last three years are:

2012 - 2013: Rs. 39,558 Crores

2011 - 2012: Rs. 29,997 Crores

2010 - 2011: Rs. 21,772 Crores

5. During February 2009 the Government of India appointed an Expert Group under the Chairmanship of Dr. Kirit S. Parikh to advice on a viable and sustainable system of pricing of petroleum products. The Expert Group published its Report on 2nd February 2010, where no compelling reasons were found to justify subsidizing of the petroleum products. The recommendations of the Expert Group were examined in detail and then placed before the Empowered Group of Ministers, which took a considered view of its recommendations.

6. During 2011, a Task Force was set up by the Government of India, to suggest a strategy to deal with increasing under-recoveries and diversion of domestic

subsidized cylinder to commercial sector. The Task Force suggested a subsidy framework which would lead to a better management of subsidy and reduction in burden to the exchequer. As per these recommendations, the framework was to be implemented in phases, to ensure a smooth transitioning from the existing regime to a better managed subsidy administration. The phases of the proposed subsidy framework are:-

- a. Phase-I: Cap consumption of subsidized cylinders to all consumers.
- b. Phase-II: Direct transfer of subsidy to consumers in his/her Aadhaar enabled bank account.
- c. Phase-III: Direct transfer of subsidy only to targeted segment of consumers

7. On 13th September 2012, Ministry of Petroleum and Natural Gas (for short 'MoPNG') issued order for capping 6 cylinders per household in a year. Thereafter on 17th January 2013, it was enhanced to 9 cylinders. The Phase-I of the proposed subsidy framework as recommended by the Task Force and approved by the Government of India was

implemented, whereby a cap of 9 subsidized cylinders for each household was introduced. It is pertinent to state that the said orders from Government of India in respect of the Phase I of the proposed subsidy framework has since then been successfully implemented all over India. Despite this cap, the challenge of ensuring that one household has only one connection between the OMCs is still there and requires a platform/method to identify such connections and deny them more than 9 subsidized cylinders per household.

8. Due to wide gap between the subsidized retail price of LPG for domestic use and the market price of commercial LPG, the unused subsidized LPG cylinder in consumers' entitlement are prone to diversion. Thus it became necessary to price all the cylinders at uniform price. This would eliminate the incentive for diversion of subsidized cylinder to non-subsidized/commercial segment. The Direct Benefit Transfer for LPG Scheme (for short '**DBTL**') aims to achieve this objective and thus reduces the subsidy leakages in LPG supply chain. Thus DBTL will reduce fiscal burden of the Government.

9. DBTL has used Information Technology in an innovative way and on such a large scale for the first time. In this scheme, de-duplication of LPG connections would be conducted on the basis of Aadhaar number. This would enable OMCs to detect nearly all multiple connections within and across the OMCs which would otherwise have been nearly impossible to detect. The multiple connections detected using Aadhaar based de-duplication would subsequently be blocked leading to further reduction in subsidy burden of the Government. Thus DBTL ensure a robust mechanism to identify genuine domestic consumers and effectively prevents future bogus enrolment in false fictitious names.

10. The broad objectives of the DBTL are:

- a. Dual pricing of Domestic LPG cylinder category encourages diversion of subsidized LPG cylinders for unauthorized usage. Diversion of LPG cylinders for unauthorized usage leads to huge loss to the exchequer. DBTL ensures that there is a single market price of the LPG cylinders

across domestic LPG cylinder category thereby removing the incentive for diversion.

- b. Direct transfer of subsidy into the bonafide LPG consumers' bank account. The subsidy disbursement is better managed, automated, and with a system based audit trail and transparency in fund transfer.
- c. Reduction in diversion of LPG cylinders to unauthorized channels reduces pressure on the overall supply chain of the LPG distribution network thus leading to better availability of LPG cylinders for genuine users and prompt cylinder deliveries, which will lead to higher satisfaction among beneficiaries.
- d. Enable effective compliance of the LPG Control Order, which prohibits more than one subsidized LPG connection per household.
- e. DBTL ensures Aadhaar based subsidy transfer only to bonafide and interested LPG consumers and weeds out duplicate and ghost/fake connections.

11. The silent features of the DBTL are:

- a. Under DBTL, the cash subsidy will be directly transferred to the LPG consumers' Aadhaar enabled bank accounts. Under DBTL, the consumers who have linked their Aadhaar number to their LPG consumer number and have linked their Aadhaar number to their Bank Account will get the cash subsidy directly into their bank account.
- b. LPG consumers desirous of availing subsidy will have to first enroll with UIDAI to obtain their Aadhaar number. No Aadhaar number is required for market priced LPG cylinders.
- c. To start receiving the subsidy directly into the bank account, consumers merely need to link or seed their Aadhaar number into:
 - i. LPG Consumer Number
 - ii. Bank account.

Multiple ways have been enabled for consumers to do so by OMCs e.g. SMS, Interactive Voice Response System, Web, Call Centre, Post etc.

- d. An LPG consumer who has linked his/her Aadhaar number to both LPG consumer number and to the bank account is called Cash Transfer Compliant Consumer (for short '**CTC**'). LPG consumers can also check for their CTC status on OMCs Transparency portal and their CTC status will be defined from the date the LPG consumer is reflected in Green color (both LPG and Bank Seeding) in OMCs transparency portal.
- e. Consumer who has NOT linked his/her Aadhaar Number to either LPG Consumer Number or Bank Account or Both is called Non Cash Transfer Compliant Consumer (for short '**Non-CTC**').
- f. On launch of DBTL in a district, all CTC consumers will get the LPG cylinders at Market (non-subsidized) Rate and the subsidy amount will be transferred directly into their bank accounts. All CTC consumers will also get a one-

time permanent advance in their bank account as soon as they book their first subsidized cylinder so that the consumer has advance money available to make the payment at the time of cylinder delivery at Market (non-subsidized) rate. This advance will remain with consumer till the termination of connection.

- g. Immediately on delivery of first cylinder the subsidy amount for the cylinder delivered will get credited in the consumer's bank account.
- h. Thereafter, subsidy eligible on each subsidized cylinder, up to the cap of 9 cylinders per financial year, will be directly transferred to the Aadhaar linked bank account of the LPG consumer.
- i. Non-CTC consumers will get a grace period of three (3) months to become CTC consumer. During this period they will continue to get the cylinders at subsidized rate just as they have been receiving before launch of DBTL. However the number of subsidized cylinders would be limited to the cap of 9 cylinders per Financial

Year as per the Government Direction dated 17th January 2013.

- j. At the end of grace period, LPG cylinders will be delivered to all domestic LPG consumers at market (non-subsidized) rate. However, the subsidy will be transferred only to CTC consumers. Other consumers i.e. non-CTC consumers will not be eligible to receive subsidy till the time they become CTC Consumers.
- k. After the end of grace period, a Non-CTC consumer as and when he links the Aadhaar number to bank account and in LPG database (i.e. become CTC consumer) will start receiving LPG subsidy from prospective effect (up to the balance of 9 subsidized cylinder in a Financial Year) and will also receive a one-time advance on booking of first cylinder after becoming CTC consumer.
- l. In case of CTC Consumer, for any cash transfer returned or wrongly made, detailed grievance redressal procedure is available.

12. Under DBTL, the benefits envisaged to the Consumers, amongst others are as:

- a. LPG Consumers will be empowered as they will be getting all their cylinders at the market price and receive the differential cash directly in their bank account without any manual intervention and any incentive to divert their entitlement is prevented.
- b. LPG consumers will receive better service when diversion is reduced and same resources will focus on domestic LPG consumers.
- c. There would be better /faster availability of new LPG connections.

13. Under DBTL, the benefits envisaged to the OMCs, amongst others are as:

- a. Reduction in the share of subsidy burden by the OMCs due to overall reduction in diversion of subsidy.

- b. OMCs may experience reduction in administrative efforts due targeted delivery of subsidy due to:
- i. Lesser policing of supply chain activities and
 - ii. Reduction in number of grievances related to unauthorized usage, diversion and delayed deliveries.
 - iii. Public auditing of Subsidy administration through Transparency Portal
- c. Shift of focus from distributor administration to consumer management leading to emergence of ways to serve consumers better with focused initiatives.
- d. Improved quality of consumer database on the basis of Aadhaar which can be leveraged for better analysis of consumer needs and thus improved services.
- e. Improvement of customer services may result in better customer satisfaction.

f. Aadhaar based de-duplication will help in getting rid of multiple connections and/or fake & ghost LPG consumers.

g. Elimination of chances of artificial product shortage.

14. Under DBTL, the benefits envisage to the Government of India, amongst others are as:

a. Launch of DBTL will reduce subsidy burden due to following factors:

i. Elimination of supply chain leakages and thus unauthorized usage.

ii. Bringing in a segment of customers opting out of subsidy, and

iii. Reduction in diversion by customers by way of Aadhaar based De-duplication of multiple connections.

b. Subsidy to only bonafide consumers.

c. Elimination of diversion and losses due to supply chain leakages may lead to better governance.

15. That DBTL has been launched and is further proposed to be implemented in the following manner:

Phase	DBTL launch on	Number of Districts
I	01.06.2013	20
II	01.09.2013	34
III	01.10.2013	44
IV	01.11.2013	46
V	01.12.2013	40
VI	01.01.2014	105
Total:		289

16. That upon implementation of Phase I of DBTL in 20 Districts, the following facts have come into light:

- a. That the sale of Domestic LPG has come down by 7.73 Lakh LPG cylinders for the period from June - August 2013 with respect to corresponding period of last year (2012) and the sale of commercial LPG has gone up by 0.97 Lakh LPG

cylinders for the same. Hence, this shows that there is reduction in diversion of domestic LPG to Commercial usage after the implementation of DBTL in Phase I districts.

- b. Approximately 76% LPG consumers have submitted their Aadhaar numbers to the LPG distributors and 60% have given it both to LPG distributors and banks. The balance may enrol themselves in due course, when they will become eligible to receive the subsidy for balance entitlement or may be duplicate/fake in which case may never enrol in the scheme.
- c. The de-duplication based on Aadhaar number was conducted on inter-company basis. A total of 50.88 lakhs Aadhaar were de-duplicated and out of that nearly 45000 were detected as cases of multiple connections,. Once these duplicate connections are blocked, it would save the exchequer around Rs. 24,00,00,000/- (Rupees Twenty Four crores only) per annum, on the assumption that the entitlement of 9 subsidized cylinders (National Policy dated 17th January 2013) per annum is consumed as each subsidized

cylinder carries a subsidy of Rs. 555.55/- (Rupees Five Hundred and Fifty Five and Fifty Five Paise only).

17. I state and submit that the DBTL has already been implemented and has been running successfully in 97 (Phase I, II and III) Districts of India and that the old system of subsidy as was subsisting before DBTL has been stopped.

18. I state and submit that the order dated 23rd September 2013 passed by this Hon'ble Court in the instant writ petition has seriously prejudiced the effective and efficient implementation of DBTL. The said order has created serious doubts and confusion and uncertainty in the minds of several crores of residents in India, who have already enrolled for Aadhaar regarding the validity and usefulness of Aadhaar.

19. I state and submit that though by the Order dated 23rd September 2013 passed by this Hon'ble Court, the OMCs have been restrained from implementing DBTL, however, because of the uncertainty caused, OMCs may have to continue with the old system of domestic LPG sales in the 54 Districts where DBTL has been

implemented and the old system has been stopped. Further the OMCs may have to continue with the two systems in the forthcoming phases of DBTL implementation in other Districts, which involves massive change in our IT and ERP systems. Such situation will lead to extreme confusion, cost overrun and wastage of resources to the OMCs, who are already severely subjected to under-recoveries as stated above.

20. I state and submit that the Order dated 23rd September 2013 passed in the instant writ petition by this Hon'ble Court has affected the rights of the OMCs, without granting any opportunity of hearing and without impleading the OMCs as parties in the instant writ petition.
21. I state and submit that the Intervenor/Applicants reserve their right to file appropriate application in the instant writ petition to bring on record all other relevant documents for proper adjudication.
22. Unless the orders as prayed for herein are passed the Intervenor/Applicants will suffer irreparable loss and prejudice.

23. The balance of convenience is in favour of an order being passed as prayed for herein.

24. The application is bonafide and made for the ends of justice

PRAYER

In the aforesaid facts and circumstances, it is therefore, humbly prayed that this Hon'ble Court may graciously be pleased to:

- a. Permit the Interveners/Applicants to intervene in the instant writ petition; and
- b. pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case

AND FOR THE ACT OF KINDNESS THE PETITIONER SHALL EVER PRAY

DRAWN AND FILED BY

**MEHARIA & COMPANY.
ADVOCATE FOR INTERVENORS / APPLICANTS**

**NEW DELHI
DRAWN ON: 05.10.2013
FILED ON: 07.10.2013**

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2. BHARAT PETROLEUM CORPORATION LIMITED
3. HINDUSTAN PETROLEUM CORPORATION LIMITED

..... APPLICANTS/INTERVENORS

AFFIDAVIT

I, P.JAYADEVAN aged about 50 years, son of Late Shri A.V.Vasudevan, Faith Hindu, working as Dy. General Manager (LPG-Sales), Indian Oil Corporation Limited, Indian Oil Bhavan, G-9, Ali Yavar Jung Marg, Bardra East, Mumbai -400 051, presently at New Delhi, do hereby solemnly affirm and state on oath as under:-

1. That I am the Dy. General Manager (LPG-Sales), Indian Oil Corporation Limited and on behalf of Applicant /Intervenor No.1, and I am well acquainted with the facts for the above case. I am duly authorized and competent to sign and affirm this affidavit on behalf of the applicant/ intervenors.
2. That I have read the copy of the Application for Intervention Page No. 1 to 26 and para 1 to 24 and say

that the facts stated therein are true to the best of my knowledge as per the record of the case and the submissions made therein are based on legal advice received by me from my Advocate and I believed to be true and correct.

3. That the Annexure(s) are true copies of their respective originals.
4. That the Petitioner has not filed any other petition in this Hon'ble Court or in any other Court against the order.

DEPONENT

VERIFICATION:

I, the abovenamed deponent do hereby verify that the contents of the above affidavit are true to the best of my knowledge as based on records of the case. No part of it is false and nothing material has been concealed therefrom.

Verified by me on this 5th day of October 2013 at New Delhi

DEPONENT

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3. HINDUSTAN PETROLEUM CORPORATION LIMITED

..... APPLICANTS/INTERVENORS

AFFIDAVIT

I, MUKESH KUMAR JAIN aged about 59 years, son of Late Shri H.C.Jain, Faith Hindu, residing at Flat No.160, Madan Lal Block, Asian Games Village, Khel Gaon, New Delhi - 110049, do hereby solemnly affirm and state on oath as under: -

1. That I am the Chief Manager (Legal), North, Bharat Petroleum Corporation Limited and on behalf of Applicant /Intervenor No.2, and I am well acquainted with the facts for the above case. I am duly authorized and competent to sign and affirm this affidavit on behalf of the applicants/ intervenors.
2. That I have read the copy of the Application for Intervention Page No. 1 to 26 and para 1 to 24 and

say that the facts stated therein are true to the best of my knowledge as per the record of the case and the submissions made therein are based on legal advice received by me from my Advocate and I believed to be true and correct.

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4. That the Petitioner has not filed any other petition in this Hon'ble Court or in any other Court against the order.

DEPONENT

VERIFICATION:

I, the abovenamed deponent do hereby verify that the contents of the above affidavit are true to the best of my knowledge as based on records of the case. No part of it is false and nothing material has been concealed therefrom.

Verified by me on this 5th day of October 2013 at New Delhi

DEPONENT

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..... APPLICANTS/INTERVENORS

AFFIDAVIT

I, Rakesh Kumar Gupta aged about 46 years, son of Shri K.K.Gupta, Faith Hindu, working as SRM-LPG in HPCL, Delhi, do hereby solemnly affirm and state on oath as under: -

1. That I am the SRM-LPG, Hindustan Petroleum Corporation Limited and on behalf of Applicant / Intervenor No.3, and I am well acquainted with the facts for the above case. I am duly authorized and competent to sign and affirm this affidavit on behalf of the applicant/ Intervenors.
2. That I have read the copy of the Application for Intervention Page No. 1 to 26 and para 1 to 24 and say that the facts stated therein are true to the best of my knowledge as per the record of the case and the

submissions made therein are based on legal advice received by me from my Advocate and I believed to be true and correct.

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4. That the Petitioner has not filed any other petition in this Hon'ble Court or in any other Court against the order.

DEPONENT

VERIFICATION:

I, the abovenamed deponent do hereby verify that the contents of the above affidavit are true to the best of my knowledge as based on records of the case. No part of it is false and nothing material has been concealed therefrom.

Verified by me on this 5th day of October 2013 at New Delhi

DEPONENT